Stephen L. Waldman, Esq. (SBN 163259)
BRANTON & WILSON, APC
701 "B" Street, Suite 1255
San Diego, CA 92101-8187
Telephone: (619) 236-1891
Facsimile: (619) 236-8005

Attorneys for Defendants
FARKAS STORE FIXTURES, INC. and CHUNG LEE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KAREL SPIKES, Plaintiff, v. FARKAS STORE FIXTURES, INC.; CHUNG LEE and DOES 1 THROUGH 10, inclusive, Defendants.	Case No. 08 CV 708 JAH RBB ANSWER TO COMPLAINT

COMES NOW Defendants FARKAS STORE FIXTURES, INC. ("FARKAS") and CHUNG LEE, severing themselves from their co-Defendants, and answer the Complaint as follows:

Inasmuch as the Complaint is not verified under the Federal Rules of Civil Procedure, these answering Defendants deny generally each, every, and all of the allegations in said Complaint, and the whole thereof, including denial of all sums and amounts alleged, to be alleged or otherwise. Further answering said Complaint and the whole thereof, these answering Defendants deny that the Plaintiff has sustained or will sustain, any injuries, damage of loss by reason of any act, omission, or negligence, or any other conduct or absence thereof, on the part of these answering Defendants or any agent, servant or employee of these answering Defendants, and deny that Defendants were negligent, careless, reckless, acted unlawfully, or were guilty of any other wrongful act or omission whatsoever.

Further answering said Complaint, and the whole thereof, these answering Defendants deny that the Plaintiff has sustained or will sustain, any injuries, damage or loss by reason of any act, omission, or negligence, or any other conduct or absence thereof, on the part of these answering Defendants or any agent, servant or employee of these answering Defendants, and deny that Defendants were negligent, careless, reckless, acted unlawfully, or with any malice, or in an oppressive nature, or were guilty of any other wrongful act or omission whatsoever, or in any manner whatsoever acted in bad faith or did not deal fairly with the Plaintiff.

SEPARATE AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The facts alleged in the Complaint, and each cause of action therein, fail to state a cause of action against these answering Defendants.

SECOND AFFIRMATIVE DEFENSE

Each and every cause of action is barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

The court is without jurisdiction over the subject matter of this action and each and every alleged cause of action contained in the Complaint.

FOURTH AFFIRMATIVE DEFENSE

The Complaint and each and every alleged cause of action therein are barred in that Plaintiff has failed to exhaust all administrative remedies and/or other non-judicial remedies in a timely manner.

FIFTH AFFIRMATIVE DEFENSE

Defendants allege that, by reason of their conduct, Plaintiff is barred by the doctrine of unclean hands from taking any relief sought in Plaintiff's Complaint.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff, by his own acts, and/or omissions, has waived his rights, if any, to recover against Defendants.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff, by his own acts, and/or omissions, is estopped from recovering against Defendants.

///

///

EIGHTH AFFIRMATIVE DEFENSE

Defendants alleges that, if Defendants are subjected to any liability herein, it will be due in whole, or in part, to the acts and/or omissions of the other parties, and any recovery obtained by Plaintiff should be barred or reduced according to law, up to and including the whole thereof.

NINTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate damages which he contends he suffered and is therefore barred from recovery.

TENTH AFFIRMATIVE DEFENSE

Defendants allege that there is no causal connection between the acts or omissions of these Defendants and the damages alleged by Plaintiff.

ELEVENTH AFFIRMATIVE DEFENSE

Defendants allege that the subject premises do not fall within the definition of a "place of accommodation" as specified in 28 C.F.R. 36014 and 42 U.S.C. Section 1218(7).

TWELFTH AFFIRMATIVE DEFENSE

Defendants allege that they did not have either actual or constructive notice of the conditions, if any, which existed at the times and place mentioned in the Complaint, which conditions may have caused or contributed to the damages alleged herein. Said lack of notice prevents Defendants from undertaking any measures to protect against said conditions.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendants allege that there are no barriers to be removed, and even it there are barriers, they are not readily removable.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendants allege that the modification demanded in the Complaint would fundamentally alter the nature of the goals, services, facilities, and privileges that are provided from the subject premises.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendants allege that the premises have not been altered and thus pursuant to 42 U.S.C. 12183(2), Defendants are not required to comply with the Americans with Disabilities Act.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendants allege that Plaintiff's Complaint fails to allege facts to entitle Plaintiff to recover his attorney's fees in the prosecution of the action alleged against these responding Defendants.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendants allege that Plaintiff has failed to exercise reasonable care, caution and prudence in his own actions and inactions and, that such negligence proximately caused or contributed to Plaintiff's damages, if any. Plaintiff's recovery from Defendants, if any, must therefore be reduced by the amount of such negligence and fault.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendants allege that any damages Plaintiff may have suffered as a result of matters alleged in the Complaint, which damages are specifically denied, were not caused by any negligence or want of care on the part of Defendants, but by the negligence or want of care of others, including, but not limited to, other named Defendants. Plaintiff's recovery, if any, from Defendants must be reduced by the amount of such negligence or fault.

NINETEENTH AFFIRMATIVE DEFENSE

Defendants allege that in the event that they are found in some manner responsible to the Plaintiff as a result of the incidents and occurrence described in Plaintiff's Complaint, that Defendants' liability would be based solely upon a derivative form of liability not resulting from the negligent conduct of the Defendants, but only resulting from an obligation posed on it by law, and they would therefore be entitled to total and complete indemnity from other unknown parties.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff's action is barred to the extent there is a conflict between state and federal law under the law of federal preemption.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Defendants are informed and believe and upon such information and belief allege that at or about the time, date and place mentioned in the Complaint, if any risk was attendant upon the activities of the Plaintiff, which these Defendants deny, that said Plaintiff knew full well of such risks and voluntarily and without compulsion or coercion assumed such risk.

TWENTY-SECOND AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that the alleged accident and damages, if any, were proximately caused by Plaintiff's carelessness, recklessness and the risks of which Plaintiff was aware of and ultimately assumed.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, as alleged in the Complaint, are speculative and uncertain and not capable of being determined by a finder of fact.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

If Plaintiff sustained any damages as a result of the actions and events alleged in the Complaint filed by Plaintiff in the matter, it will be due solely to the Plaintiff or some other parties independent and superceding negligence or other tortious misconduct which proximately caused the damages, if any, of which Plaintiff now complains.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

The causes of action contained in the Complaint, and each of them are barred by the doctrine of laches, in that Plaintiff unreasonably delayed in bringing these claims, and said delays have prejudiced Defendants.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Defendants allege that they may have additional defenses that cannot be articulated due to Plaintiff's failure to particularize his claims, due to the fact that the Defendants do not have copies of certain documents bearing on Plaintiff's claims and due to Plaintiff's failure to provide more specific information concerning the nature of the damage claims, and claims for certain costs which Plaintiff alleges that Defendants may share some responsibility. Defendants therefore reserve the right to assert additional defenses upon further particularization of Plaintiff's claims, upon examination of the documents, provided, upon discovery of further information concerning the alleged damage claims, and claims for costs and upon the development of other pertinent information.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Defendants reserve the right to amend their answer herein, including the addition of affirmative defenses after pleading and discovery and preparation for trial.

WHEREFORE, Defendants prays for judgment against the Plaintiff as follows:

1. That Plaintiff take nothing by way of his action;

2. That Defendants be awarded their attorney's fees and cost of suit incurred herein;

3. For such other and further relief as the court deems just and proper.

BRANTON & WILSON, APC

Dated: May 28, 2008

By:s/Stephen L. Waldman
Attorneys for Defendants FARKAS STORE FIXTURES, INC. and CHUNG LEE
E-mail: swaldman@brantonwilson.com